

CITY PLANNING & ZONING COMMISSION
MEETING MINUTES
April 27, 2011

The Bismarck Planning & Zoning Commission met on April 27, 2011, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Yeager presided.

Commissioners present were Mark Armstrong, Tom Atkinson, Mel Bullinger, Jo Conmy, Vernon Laning, Ken Selzler, Lisa Waldoch, John Warford and Wayne Yeager.

Commissioner Curt Juhala was absent.

Staff members present were Carl Hokenstad – Community Development Director, Kim Lee – Planning Manager, Gregg Greenquist – Planner, Jason Tomanek – Planner, Kimberley Gaffrey – Office Assistant III and Paul Fraase – Assistant City Attorney.

Others present were Harvey Schneider (Toman Engineering) – 501 1st Street Northwest, Mandan, Dave Patience (Swenson Hagen & Co.) – 909 Basin Avenue, Wade Felton – 503 Greenfield Lane, Ben White and Brad Krogstad (Kadmas Lee & Jackson) – 128 Soo Line Drive, Bruce Strinden - 3800 Commerce Street #D (Newman Outdoor Advertising) and Leo Ness (Newman Outdoor Advertising) – 1606 6th Avenue SW, Jamestown.

MINUTES

Chairman Yeager called for consideration of the minutes of the April 27, 2011 meeting.

MOTION: Commissioner Warford made a motion to approve the minutes of the April 27, 2011 meeting as received. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

CONSIDERATIONS –

ZONING CHANGE FROM A AND RR TO RR AND PRELIMINARY PLAT – ROCK CREEK 3RD SUBDIVISION

ZONING CHANGE FROM A TO RR AND PRELIMINARY PLAT – COPPER RIDGE 3RD SUBDIVISION

PRELIMINARY PLAT – GCC 1ST ADDITION

ZONING CHANGE FROM RT TO RT & CG – MEADOWLARK HILL 2ND ADDITION

Chairman Yeager called for consideration of the following consent agenda items:

- A. A zoning change from the A-Agricultural and RR-Residential zoning districts to the RR-Residential zoning district and preliminary plat for Rock Creek 3rd Subdivision. The

property is 1 lot in 1 block on 2.34 acres, located 4.6 miles east of US Highway 83, north of 71st Avenue NE (part of the SE¼ of Section 5, T139N-R79W/ Gibbs Township, including a replat of Lot 1 Block 5, Rock Creek 2nd Subdivision).

- B. A zoning change from the A-Agricultural zoning district to the RR-Residential zoning district and preliminary plat for Copper Ridge 3rd Subdivision. The property is 161 lots in 9 blocks on 367.75 acres, located south of 62nd Avenue SE between 52nd Street SE and 66th Street SE (Section 31, T138N-R79W/Apple Creek Township, less those parts previously platted as Copper Ridge Subdivision and Copper Ridge 2nd Subdivision).
- C. A preliminary plat for GCC First Addition. The property is 1 lot in 1 block on 2.21 acres, located along the west side of Yegen Road south of Apple Creek Road and north of Morrison Avenue (an unplatted portion of the NE¼ of Section 11, T138-R80W/ Lincoln Township).
- D. A zoning change for Meadow Lark Hill Second Addition Replat. The property is 2 lots in 1 block, located along Schafer Street west of the intersection with Divide Avenue and is a replat of Lot 1, Block 1, Meadow Lark Hill Second Addition.

MOTION: Based on the findings in the staff reports, Commissioner Armstrong made a motion to approve Consent Agenda items A, B, C and D, tentatively approving the preliminary plats calling for a public hearing on all items. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

FINAL CONSIDERATION – ANNEXATION – LOTS 1-3, BLOCK 1, OXENTENKO COMMERCIAL PROPERTIES SUBDIVISION

Chairman Yeager called for the final consideration for the annexation for Lots 1-3, Block 1, Oxentenko Commercial Properties Subdivision, the south half of the adjacent Calgary Avenue right-of-way and all of the adjacent St. Lawrence Street. The property is located along the south side of Calgary Drive between 14th Street and St. Lawrence Street.

Ms. Lee provided an overview of the request and listed the following findings for the annexation:

1. The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the annexation, as the property is already developed.
2. The proposed annexation would not adversely affect property in the vicinity.
3. The proposed annexation is consistent with the general intent and purpose of the zoning ordinance.

4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.

Ms. Lee then provided the additional information:

1. City services were provided to this property in December 2007 with an annexation agreement between the property owner and the City agreeing that the property would be annexed in three years.

Ms. Lee said based on the above findings, staff recommends annexation of Lots 1-3, Block 1, Oxentenکو Commercial Properties Subdivision, along with the south half of the adjacent Calgary Avenue and all of the adjacent St. Lawrence Street.

MOTION: Commissioner Laning made a motion to approve the annexation Lots 1-3, Block 1, Oxentenکو Commercial Properties Subdivision, along with the south half of the adjacent Calgary Avenue and all of the adjacent St. Lawrence Street. Commissioner Conmy seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

FINAL CONSIDERATION – ANNEXATION – LOTS 1-10, BLOCK 1; LOT 1, BLOCK 2; LOTS 1-2, BLOCK 3; LOTS 1-2, BLOCK 4; LOT 1, BLOCK 5 AND LOT 1, BLOCK 7, SATTLER’S SUNRISE SIXTH ADDITION

Chairman Yeager called for the final consideration for the annexation for Lots 1-10, Block 1; Lot 1, Block 2; Lots 1-2, Block 3; Lots 1-2, Block 4; Lot 1, Block 5 and Lot 1, Block 7, Sattler’s Sunrise Sixth Addition. The property is located in northeast Bismarck, one-half mile east of Centennial Road and north of Century Avenue, along the east edge of existing Sattler’s developments (part of Section 24, T139N-R80W/Hay Creek Township).

Mr. Greenquist provided an overview of the request and listed the following findings for the annexation:

1. The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the annexation at the time the property is developed.
2. The proposed annexation would not adversely affect property in the vicinity.
3. The proposed annexation is consistent with the general intent and purpose of Title 14 of the City Code of Ordinances.
4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.

Mr. Greenquist said based on the above findings, staff recommends annexation of Lots 1-10, Block 1; Lot 1, Block 2; Lots 1-2, Block 3; Lots 1-2, Block 4; Lot 1, Block 5 and Lot 1, Block 7, Sattler's Sunrise Sixth Addition.

MOTION: Commissioner Warford made a motion to approve the annexation of Lots 1-10, Block 1; Lot 1, Block 2; Lots 1-2, Block 3; Lots 1-2, Block 4; Lot 1, Block 5 and Lot 1, Block 7, Sattler's Sunrise Sixth Addition. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

FINAL CONSIDERATION – ANNEXATION – LOTS 19-25, BLOCK 2 AND LOTS 1-3, BLOCK 4, SATTLER'S SUNRISE EIGHTH ADDITION

Chairman Yeager called for the final consideration for the annexation for Lots 19-25, Block 2 and Lots 1-3, Block 4, Sattler's Sunrise Eighth Addition. The property is located in northeast Bismarck, one-half mile east of Centennial Road and north of Century Avenue, along the east edge of existing Sattler's developments (Part of Section 24, T139N-R80W/Hay Creek Township).

Mr. Greenquist provided an overview of the request and listed the following findings for the annexation:

1. The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the annexation at the time the property is developed.
2. The proposed annexation would not adversely affect property in the vicinity.
3. The proposed annexation is consistent with the general intent and purpose of Title 14 of the City Code of Ordinances.
4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.

Mr. Greenquist said based on the above findings, staff recommends annexation of Lots 19-25, Block 2 and Lots 1-3, Block 4, Sattler's Sunrise Eighth Addition.

MOTION: Commissioner Armstrong made a motion to approve the annexation of Lots 19-25, Block 2 and Lots 1-3, Block 4, Sattler's Sunrise Eighth Addition. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT – MEADOW LARK HILL 2ND ADDITION REPLAT

Chairman Yeager called for the public hearing for the minor subdivision final plat for Meadow Lark Hill 2nd Addition Replat. The property is located along Schafer Street west of the intersection with Divide Avenue (a replat of Lot 1, Block 1, Meadow Lark Hill Second). The proposed subdivision will create two lots from one lot and will utilize the existing access on Schafer Street.

Mr. Greenquist provided an overview of the request and listed the following findings for the minor subdivision final plat:

1. The proposed plat meets the criteria for a minor subdivision final plat.
2. All technical requirements for approval of a minor subdivision final plat have been met.
3. The storm water management plan has been approved by the City Engineer.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include the existing office building to the southwest. A bar/restaurant is located across Schafer Street to the southeast, a grocery store is located across Divide Avenue to the east, and the I-94/Divide Avenue interchange right-of-way is along the north sides of the proposed minor plat.
5. The property is already annexed; therefore, the proposed subdivision would not place an undue burden on public services.
6. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
7. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Greenquist said based on the above findings, staff recommends approval of minor subdivision final plat of Meadow Lark Hill 2nd Addition Replat.

Commissioner Armstrong asked if there is a four leaf clover interchange planned for this area that would impact the proposed plat. Mr. Greenquist responded by saying he is unaware of any such plans.

Commissioner Armstrong expressed his concern with the future roads and if there will be enough space in this area to widen the roads if there will be buildings in this space. Mr. Greenquist commented that the North Dakota Department of Transportation and the Metropolitan Planning Organization are both on the distribution list for proposed plats and no comments were received from either entity with regards to this proposed plat.

Chairman Yeager opened the public hearing for the minor subdivision final plat for Meadow Lark Hill 2nd Addition Replat.

Dave Patience with Swenson Hagen & Co. said that this is not the first time that a building has been proposed for this location. The plat and zoning change were previously approved but the mylar was never recorded. He went on to say that because of the fact that there is a steep slope going to the west, it is doubtful that a ramp can be constructed to be level with the finished grade of the overpass without some serious changes to the existing interstate. Mr. Patience concluded by saying he would not have a problem waiting for approval of the proposed plat at the May meeting when the public hearing on the zoning change will be held.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff reports, Commissioner Armstrong made a motion to continue the public hearing for the minor subdivision final plat for Meadow Lark Hill 2nd Addition Replat to the May 25, 2011 Bismarck Planning & Zoning Commission meeting. Commissioner Conmy seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT – NORTH HILLS FIFTEENTH ADDITION REPLAT

Chairman Yeager called for the public hearing for the minor subdivision final plat for North Hills Fifteenth Replat. The property is located approximately 1/8 mile south of 43rd Avenue between Normandy and Dominion Streets (a replat of Lots 1-3 and part of Lot 4, Block 1, North Hills Fifteenth Addition).

Mr. Tomanek provided an overview of the request and listed the following findings for the minor subdivision final plat:

1. The proposed plat meets the criteria for a minor subdivision final plat.
2. All technical requirements for approval of a minor subdivision final plat have been met.
3. The storm water management plan amendment has been approved by the City Engineer.
4. The proposed subdivision is compatible with adjacent land uses; adjacent land uses include partially developed, multi-family zoned property to the south and west, a developing office complex and undeveloped RT-zoned land to the north, developed single-family residential to the east and undeveloped, agriculturally-zoned land to the south.
5. The proposed minor subdivision is already annexed, therefore; it would not place an undue burden on public services.

6. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
7. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek then provided the following additional information:

1. There is a 15-foot landscape buffer yard easement along the easternmost property line of Lot 1, Block 1. The easement is appropriate due to the single-family dwelling directly to the east. The easement was also part of the original North Hills 15th Addition.

Mr. Tomanek said based on the above findings, staff recommends approval of the minor subdivision final plat of North Hills Fifteenth Addition Replat.

Chairman Yeager opened the public hearing for the minor subdivision final plat for North Hills Fifteenth Addition Replat.

There was no public comment.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff reports, Commissioner Laning made a motion to approve the minor subdivision final plat for North Hills Fifteenth Addition Replat. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE FROM R5-RESIDENTIAL, R10-RESIDENTIAL, RT-RESIDENTIAL AND CG-COMMERCIAL TO PUD-PLANNED UNIT DEVELOPMENT, R10-RESIDENTIAL, RT-RESIDENTIAL AND CG-COMMERCIAL AND FINAL PLAT – SONNET HEIGHTS SUBDIVISION FIFTH REPLAT

Chairman Yeager called for the public hearing for the zoning change from the R5-Residential, R10-Residential, RT-Residential and CG-Commercial zoning districts to the PUD-Planned Unit Development, R10-Residential, RT-Residential and CG-Commercial zoning districts and final plat for Sonnet Heights Subdivision Fifth Replat. The property is 37 lots in 3 blocks on 13.25 acres and is located along the west side of Ottawa Street between LaSalle Drive and 43rd Avenue NE (a replat of Lot 4, Block 23, Lots 1-3, Block 24, Lots 10-27, Block 25, Lots 9-18, Block 26 and Lots 1-4, Block 27, Sonnet Heights Subdivision).

Mr. Tomanek provided an overview of the request and listed the following findings for the zoning change:

1. The proposed zoning change would be consistent with the US Highway 83 Corridor Transportation Study recommendations, which identifies this area as urban residential and mixed uses. Mixed uses include residential, office and commercial uses.
2. The proposed zoning change is compatible with adjacent land uses. There is partially-developed single-family residential to the west, partially-developed single and two-family residential to the north, undeveloped property that is zoned RT – Residential to the south and commercial development to the east. There is one established, single-family dwelling unit directly adjacent to the southeast corner of the proposed subdivision. Should the property adjacent to the single-family dwelling be developed, vegetative buffer yards would be required on the south 20-feet of Lots 1 and 4, Block 1 and the east 20-feet of Lot 5, Block 4 that is adjacent to the single-family dwelling. A 20-foot landscape buffer yard is shown in the appropriate location on the plat.
3. The area is already annexed; therefore the zoning change will not place an undue burden on public services.
4. The proposed zoning change would not adversely affect property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change is consistent with all adopted plans, policies and accepted planning practice.

Mr. Tomanek then listed the following findings for the plat:

1. All technical requirements for consideration of a final plat have been met.
2. The proposed subdivision is consistent with the Fringe Area Road Master Plan, which identifies Ottawa Street as a north-south collector roadway for Section 16.
3. The storm water management plan has been approved by the City Engineer.
4. The proposed subdivision is compatible with adjacent land uses. There is partially-developed single-family residential to the west, partially-developed single and two-family residential to the north, undeveloped property that is zoned RT – Residential to the south and commercial development to the east. There is one established, single-family dwelling unit directly adjacent to the southeast corner of the proposed subdivision. Should the property adjacent to the single-family dwelling be developed while the residence is occupied; vegetative buffer yards would be required on the south 20-feet of

Lots 1 and 4, Block 1 and the east 20-feet of Lot 5, Block 4 that is adjacent to the single-family dwelling.

5. The proposed subdivision is already a completely annexed; therefore, the proposed subdivision would not place an undue burden on public services.
6. The proposed subdivision would not adversely affect property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek then listed the following additional information:

1. There is a 35-foot strip of land within Lots 1-2, Block 1 and Lot 1, Block 2 that is currently part of the Ottawa Street right-of-way. Owners along Ottawa Street have petitioned to vacate the east 35-feet and the west 35-feet of the Ottawa Street right-of-way. The Board of City Commissioners will be acting on this request during the regular meeting of April 26, 2011.
2. Sonnet Heights Subdivision 3rd Replat was created in 2009 with similar a PUD zoning classification. The PUD for Sonnet Heights 3rd Replat is the model for the proposed PUD zoning for Lots 1-24, Block 3; in which single-family dwellings is the sole permitted use. Each dwelling unit is adjacent to a private, 20-foot wide access easement/alleyway with a 20-foot front yard setback requirement.

Mr. Tomanek said based on the above findings, staff recommends approval of the zoning change from the from the R5-Residential, R10-Residential, RT-Residential and CG-Commercial zoning districts to the PUD-Planned Unit Development zoning district for Lots 1-24, Block 3 as outlined in the PUD ordinance or Lots 1-4, Block 7, to the R10-Residential zoning district for Lots 5-9, Block 1, to the RT-Residential zoning district for Lots 3-4, Block 1 and Lots 2-4, Block 2 and to the CG-Commercial zoning district for Lots 1-2, Block 1 and Lot 1, Block 2 and final plat for Sonnet Heights Subdivision Fifth Replat, removing the condition that the west 35-feet and the east 35-feet of right-of-way along Ottawa Street has been vacated by the Board of City Commissioners, because the vacation was approved by the Board of City Commissioners on April 26, 2011.

Chairman Yeager called for the public hearing for the zoning change from the R5-Residential, R10-Residential, RT-Residential and CG-Commercial zoning districts to the PUD-Planned Unit Development, R10-Residential, RT-Residential and CG-Commercial zoning districts as outlined in the ordinance included in the packet and final plat for Sonnet Heights Subdivision Fifth Replat.

There was no public comment.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff reports, Commissioner Armstrong made a motion to approve the zoning change from the R5-Residential, R10-Residential, RT-Residential and CG-Commercial zoning districts to the PUD-Planned Unit Development zoning district for Lots 1-24, Block 3 as outlined in the PUD ordinance or Lots 1-4, Block 7, to the R10-Residential zoning district for Lots 5-9, Block 1, to the RT-Residential zoning district for Lots 3-4, Block 1 and Lots 2-4, Block 2 and to the CG-Commercial zoning district for Lots 1-2, Block 1 and Lot 1, Block 2 and final plat for Sonnet Heights Subdivision Fifth Replat. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

FINAL CONSIDERATION – ANNEXATION AND PUBLIC HEARING – ZONING CHANGE FROM A-AGRICULTURAL AND R5-RESIDENTIAL TO R5-RESIDENTIAL AND FINAL PLAT – EAGLE CREST FOURTH ADDITION

Chairman Yeager called for the final consideration of the annexation and public hearing for the zoning change from the A-Agricultural and R5-Residential zoning districts to the R5-Residential zoning district and final plat for Eagle Crest Fourth Addition. The property is 56 lots in 5 blocks on 26.11 acres and is located in north Bismarck along the west side of Valley Drive between Tyler Parkway and Mustang Drive (a replat of Auditor's Lot A1 of the NW¼ and SW¼ of Section 20, T139N-R80W/Hay Creek Township).

Mr. Greenquist provided an overview of the request and listed the following findings for the annexation:

1. The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the annexation at the time the property is developed.
2. The proposed annexation would not adversely affect property in the vicinity.
3. The proposed annexation is consistent with the general intent and purpose of Title 14 of the City Code of Ordinances.
4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.

Mr. Greenquist provided an overview of the request and listed the following findings for the zoning change:

1. The proposed zoning change would be consistent with the Land Use Plan, which identifies the long range use of this area as urban residential and open space (Bismarck-Mandan Regional Land Use Plan).
2. The proposed zoning change would be compatible with adjacent land uses. Adjacent land uses include undeveloped agricultural land to the south, west, and north. There is public land to the east and a park to the northeast.
3. The subdivision proposed for this property would be annexed prior to development; therefore, the zoning change will not place an undue burden on public services and facilities.
4. The proposed zoning change would not adversely affect property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
6. The proposed zoning change is consistent the master plan, other adopted plans, policies and accepted planning practice.

Mr. Greenquist then listed the following findings for the plat:

1. All technical requirements for approval of a final plat have been met.
2. The City Engineer has approved the Storm Water Management Plan.
3. The proposed subdivision does not impact the Fringe Area Road Master Plan for the area, which identifies Valley Drive as the north-south collector for this section.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include undeveloped agricultural land to the south, west, and north. There is public land to the east and a public park to the northeast.
5. The proposed subdivision would be annexed prior to development; therefore, it will not place an undue burden on public services and facilities.
6. The proposed subdivision would not adversely affect property in the vicinity; public access has been provided to the adjoining property west of this plat.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.

8. The proposed subdivision is consistent the master plan, other adopted plans, policies and accepted planning practice.

Mr. Greenquist then listed the following additional information:

1. There is an adjoining area of developable land along the west side of this plat. Conceptual plans for development of this land have been prepared. Proper access has been provided for that land which would otherwise be landlocked because of steep terrain.
2. The westward projection of the future street providing this access, High Creek Place, is approximately centered on the high ground of the existing topography. This location should allow new lots to be created along the future westward extension of that street.
3. The future westward extension of High Creek Place will require cooperation between existing adjacent land owners. High Creek Place is centered on the quarter line which is also a property ownership boundary, with different land owners on each side of the quarter line for the property directly west of this plat.
4. The main east/west street in this plat is improperly named Round Top Road. At the intersection with Valley Drive, the existing street coming in from the east is named Daytona Drive. The name Daytona Drive should be maintained for the westward continuation from that intersection. Using the name Daytona Drive will avoid confusion for public sector emergency services, private sector services, deliveries etc., and better serve the future residents of this area. This is supported by the zoning ordinance.

14-09-05 (6)(n) "No street names will be used that will duplicate or be confused with the names of existing streets. Streets that are now or will eventually be continuations of existing streets shall be called by the names of the existing streets. The city shall make at least general recommendations for street names."

Mr. Greenquist said based on the above findings, staff recommends approval of the annexation of Lots 1-5, Block 1 and Lots 16-19, Block 2, the zoning change from the A-Agricultural and R5-Residential zoning districts to the R5-Residential zoning district and final plat for Eagle Crest Fourth Addition, with the condition that the street name be changed from Round Top Road to Daytona Drive prior to the plat being forwarded to the Board of City Commissioners for final action.

Commissioner Laning asked if there would be any legal issue regarding the name change that would be a concern. Mr. Greenquist answered by saying he spoke with the Director of Bismarck Parks and Recreation and they do not have any issues with changing the street name to Daytona Drive so it is consistent with the street on the other side of Valley Drive. Bismarck Parks and Recreation is the current owner of the land. Mr. Greenquist added that after reviewing the purchase agreement, there were not any stipulations listed to keep the street name of Round Top Road.

Commissioner Laning asked if Lots 1-5, Block 1 and 16-19, Block 2 are the only lots to be annexed. Mr. Greenquist confirmed that those will be the only annexed lots at this time.

Chairman Yeager called for the public hearing for the zoning change from the A-Agricultural and R5-Residential zoning districts to the R5-Residential zoning district and final plat for Eagle Crest Fourth Addition.

Dave Patience with Swenson Hagen & Co. stated that the current developers of the proposed plat for Eagle Crest Fourth Addition have an option to purchase the land on the west and south side of the proposed future cul-de-sac for High Creek Place. He continued by saying the Crouse Family Trust owns the north half of that property and Wade Felton can make his own comments regarding that. Mr. Patience went on to say that per Bill Clairmont, it was part of his agreement with Bismarck Parks and Recreation that the street name remain Round Top Road. He concluded by saying there are several streets that are different names on the opposite sides of a road.

Wade Felton said he represents Crouse Family limited partnership and they own the land to the north of the proposed High Creek Place cul-de-sac. His request is to include the cul-de-sac with the proposed Eagle Crest Fourth Addition so both sides can be developed at the same time. He thinks that it would be easier to include it in the proposed plat now, instead of fighting about it three or four years down the road.

Chairman Yeager closed the public hearing.

There was a brief discussion regarding the street name change from Round Top Road to Daytona Drive.

MOTION: Based on the findings contained in the staff reports, Commissioner Laning made a motion to approve the annexation of Lots 1-5, Block 1 and Lots 16-19, Block 2, the zoning change from the A-Agricultural and R5-Residential zoning districts to the R5-Residential zoning district and final plat for Eagle Crest Fourth Addition, with the condition that the street name be changed from Round Top Road to Daytona Drive prior to the plat being forwarded to the Board of City Commissioners for final action. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – SPECIAL USE PERMIT FOR LOTS 10-12, BLOCK 5, HAIGHT & LITTLE’S ADDITION (1804 NORTH 13TH STREET)

Chairman Yeager called for the public hearing for a special use permit to allow the south face of the existing billboard on Lots 10-12, Block 5, Haight and Little’s Addition to be replaced with a digital billboard. The property is located along the east side of State Street between Divide Avenue and Spaulding Avenue (1804 North 13th Street).

Ms. Lee provided an overview of the request and listed the following findings for the special use permit:

1. The proposed digital billboard does not meet the provisions outlined in Section 4-04-12(5). In particular, the digital billboard is not oriented away from the residential property and the sign face or viewing surface of the digital billboard sign is clearly visible from the residential property located within 300 feet of the sign.
2. The proposed special use is not in harmony with the purpose and intent of the zoning ordinance and the master plan of the City of Bismarck. In particular, the provisions established for granting a special use permit for a digital billboard in this location have not been met.
3. The proposed special use may adversely affect the public health, safety and general welfare.
4. The proposed special use may be detrimental to the use or development of adjacent properties.
5. The proposed special use will not comply with all special regulations established by Section 14-03-08 of the City Code of Ordinances, and all special conditions necessary for the safety and welfare of the public.

Ms. Lee then listed the following additional information:

1. Section 4-04-12 of the City Code of Ordinances (Special Provisions for Digital Billboard Signs) includes a provision that digital billboards must be located at least 300 feet from any RR, RR5, R5, R10, RM or RMH zoning district, as measured from any part of the sign to the nearest property line in any residential zoning district. This distance may be reduced to 150 feet provided the following requirements are met:
 - a. The digital billboard is oriented away from the residential property;
 - b. No portion of the sign face or viewing surface of the digital billboard is visible from the residential property; and
 - c. A special use permit is approved by the Planning & Zoning Commission in accordance with the provisions of Section 14-03-08.
2. A permit for the existing billboard structure was issued in 1987. The existing billboard structure is located within 300 feet of property in a residential zoning district. The applicants are requesting the special use permit to reduce this distance to 150 feet in accordance with the provisions of Section 4-04-12 (Special Provisions for Digital Billboards), subsection 5.

Ms. Lee said that based on the above findings, staff recommends denial of the special use permit to allow the south face of the existing billboard on Lots 10-12, Block 5, Haight and Little's Addition to be replaced with a digital billboard.

Commissioner Laning asked if any amount of shrouding would help with the visibility of the sign face. Ms. Lee responded by saying that any visibility of sign faces are not allowed within 300 feet of a residential property and that is a requirement of the sign ordinance.

Chairman Yeager opened the public hearing for the special use permit to allow the south face of the existing billboard on Lots 10-12, Block 5, Haight and Little's Addition (1804 North 13th Street) to be replaced with a digital billboard.

Bruce Strinden with Newman Outdoor Advertising said he is requesting approval of a special use permit to install a digital billboard face on one of the existing billboard face. Mr. Strinden continued by saying that digital billboards are the latest technology in the industry and there are currently digital billboards operating in Fargo and Grand Forks. He went on to say that the intent is to provide the same cutting edge technology in Bismarck, in the interest of offering local businesses greater flexibility in their advertising. Mr. Strinden added that digital billboards offer local law enforcement officials and emergency management the ability to instantly display amber alerts and other public safety messages at no charge to public entities. He noted that digital billboards are different than the electronic message centers that many businesses use because digital billboards to do flash, scroll, or display animation. He also said that if you look at a digital billboard from an angle, you cannot see the face of the sign and would only see black. The sign in question is positioned so that the best read is on States Street.

Leo Ness with Newman Outdoor Advertising said the he agrees the house on 13th Street North is within 300 feet of the sign, but the houses within 300 feet located on 14th Street North would not be able to see the digital billboard because of the angle of the sign and the angle of the houses to the sign. He continued by saying that he has read all 45 pages of the City of Bismarck's Master Plan two or three times, and to the best of his knowledge, his business is the only one singled out in the Plan as far as planning staff's goal to limit. Mr. Ness stated that he has never met a planner that is pro outdoor advertising and those planners go to planning school and take a class called "We Hate Billboards". He went on to say that in 1996 the Federal Highway Administration said that electronic signs are legal on any state or federally funded highway because they do not show intermittent lighting or video streaming. Mr. Ness said that there is nothing changing with this billboard, it is already sitting there, it is going to stay there, they just want to change it to a digital billboard to display ads.

Mr. Strinden then presented a video of an operational digital billboard.

There was some discussion regarding the lighting used with digital billboards and the brightness of the lighting.

Chairman Yeager closed the public hearing.

Commissioner Warford asked the Assistant City Attorney if the proposed sign would be in violation of Section 4-04-12 of the City Code of Ordinances. Mr. Fraase responded by saying that the City Attorney Charlie Whitman's position is that digital billboard must be located 300 feet away from a residential zoned property and in order to go to the 150 feet distance, there

needs to be a factual call made. The factual call has to be that the digital billboard is oriented away from the residential property and no portion of the sign face viewing surface of the digital billboard is visible from the residential property in order to allow it at 150 feet.

Commissioner Warford said that even though he is a proponent and user of billboards, but this digital billboard would be in violation of the City Code of Ordinances and planning staff are just following those ordinances.

MOTION: Based on the findings contained in the staff report, Commissioner Warford made a motion to deny the special use permit to allow the south face of the existing billboard on Lots 10-12, Block 5, Haight and Little's Addition to be replaced with a digital billboard. Commissioner Armstrong seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

OTHER BUSINESS

RESOLUTION FOR JACK HEGEDUS

Chairman Yeager read the resolution of appreciation for Jack Hegedus.

ADJOURNMENT

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 6:28 p.m. to meet again on May 25, 2011.

Respectfully submitted,

Kimberley Gaffrey
Recording Secretary

Wayne Yeager
Chairman